

## Women's Rights and Postconflict Legislative Reforms

*As long as we take the view that these are problems for women alone to solve, we cannot expect to reverse the high incidence of rape and child abuse. Domestic violence will not be eradicated. We will not defeat this scourge that affects each and every one of us, until we succeed in mobilizing the whole of our society to fight it.*

– Nelson Mandela

Previous chapters looked at two key opportunity structures or transitional processes that women's rights activists sought to influence: peace negotiations and constitution-making exercises. The outcomes of these processes included peace agreements (Chapter 6) and revised constitutions (Chapter 7) that incorporated provisions for increased women's representation and stronger women's rights. These paved the way for legislative changes and other policy reforms affecting women's rights. The main areas of legislative reform influencing women in postconflict contexts have been in the areas of violence against women, family law, land, and quotas to promote women's representation in legislatures and other bodies, which was already discussed in Chapter 8. This chapter looks at legislation around women's rights in the areas of gender-based violence and family law and discusses some of the challenges in focusing on legal solutions in postconflict contexts.

As with constitutional changes, there are large differences between countries that have experienced major conflict and those that have not when it comes to legislative reform. This was already evident in the Chapter 8 discussion of quota law adoption, where we saw that 76 percent of postconflict countries had adopted quotas while only 58 percent of nonconflict countries had done so. After the 1990s, women's rights activists in postconflict countries were beginning to see many of their aspirations for greater rights addressed through the passage of legislation. In discussing legislation as an outcome

of the processes described in this book, there is no assumption that once legislation is enacted that it is always enforced or that it radically changes women's lives. However, it does establish the normative ground rules for society and what is regarded as acceptable societal practices and behavior. It creates the legal basis from which women can demand their rights and enforce change. Thus, these legal changes are a way of measuring where a society stands in relation to women's rights, but they are insufficient as a measure of their actual impact on women's lives. Nevertheless, lack of enforcement does not invalidate the importance of the effort of establishing a legal framework as a starting point.

### UGANDA'S LEGAL FRAMEWORK FOR WOMEN'S RIGHTS

Uganda serves as a case in point, demonstrating how constitutional changes manifested themselves in legislative and other policy reforms. In Uganda, policy changes were spearheaded by the women's movement together with the Uganda Women Parliamentary Association (UWOPA), which has allowed women to work across party lines (Wang 2013b). They have been instrumental in passing a steady stream of legislation affecting women with respect to land (1997, 2010 amended), refugee rights (2006), maternity leave (increasing days off; 2006), employment (2006), sexual harassment (2006), equal opportunities (2007), defilement (2009), disability rights (2008), trafficking (2009), domestic violence (2010) and its regulations (2011), female genital cutting (2010), and many other concerns. An International Criminal Court Act (2010) criminalized sexual exploitation of women during conflict. In 2006 a law was passed to establish the Equal Opportunities Commission, which was mandated by the 1995 constitution to oversee the implementation of policies regarding women's rights. In July 2010, Uganda's Parliament ratified the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol), having faced powerful opposition by the Roman Catholic Church and the Uganda Joint Christian Council. There are still important gaps in legislation, particularly with respect to marriage, divorce, and land inheritance, but the legislature has continued to be active in passing laws affecting women.

The first National Gender Policy was passed in 1997, and the second Uganda Gender Policy was launched in 2007 along with a National Action Plan in response to the UNSCR 1325 requirement that countries develop policies to set their priorities in peacemaking and conflict resolution as they relate to women and girls.

The courts have also played a role in promoting women's rights. For example, in 2007, a constitutional court struck down key provisions of the Succession Act regarding women's right to inherit property, the Divorce Act, and the Penal Code Act and made a ruling that decriminalized adultery for women (it had not been criminalized for men).

## GENDER-BASED VIOLENCE

At least 75 percent of postconflict countries have legislation around violence against women compared with 50 percent of countries that have not experienced conflict in sub-Saharan Africa (See Table 9.1). This is a very rough calculation because it does not address the content of the legislation. I made a similar calculation five years ago and found the difference between the two groups of countries to be even larger on the order of a 2:1 ratio (Tripp 2010b). This suggests that the gap is closing between the two sets of countries as a result of diffusion. Nevertheless, the postconflict trajectory has been faster than that of nonconflict countries, while taking place in the same time period. This is *because most of the conflict countries in question were not in any position to pass legislation until fairly recently because of instability* (Tables 9.1 and 9.2).

Much of the change in thinking regarding gender-based violence (GBV) in Africa overall came out of experiences within conflict that heightened awareness of the severity of the problem. For example, one of the most important rulings that helped shatter prevailing norms about gender violence, not only in Africa, but globally, was the judgment against former mayor Jean-Paul Akayesu delivered by the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) in 1998. For the first time in history, rape and sexual violence were explicitly recognized as “an act of genocide and a crime against humanity.” It was the first ruling to consider a broad definition of rape involving a sexual physical invasion beyond merely a narrow description of penile penetration of the vagina and to regard rape as a form of torture (Copelon 2000, 227). This ruling has made it possible for countries like Burundi to introduce laws like the 2003 Law (No 1/004/2003), which penalizes the crime

TABLE 9.1 *Gender-Based Violence Laws Passed in African Countries (% of total for category), 2014*

Sub-Saharan African countries	Sexual harassment	Sexual violence	Domestic violence	Marital rape	Trafficking	FGM*	Total
Post-major conflict	66	73	86	60	73	86	75
No major conflict	46	40	40	36	80	46	50
% Difference between conflict and no conflict	20	33	46	24	-13	40	25
All countries	56	56.5	63	48	76.5	66	62.5

\*Figures only for countries that practice female genital mutilation (FGM).

TABLE 9.2 Median Year Laws Passed in African Countries, 2014

Sub-Saharan African countries	Sexual harassment	Sexual violence	Domestic violence	Marital rape	Trafficking	FGM*
Post-major conflict	2006	2002	2007	2008	2008	2002
No major conflict	2003	2002	2006	2007	2007	1998

\*Figures only for countries that practice female genital mutilation (FGM).

Source: UN Secretary General's Database on Violence against Women: <http://webappsoi.un.org/vawdatabase/searchDetail.action?measureId=10221> (Womanstats; LexisNexis). DR Congo, Somalia, and Central African Republic are removed from the list because they have had ongoing conflict.

of genocide, war crimes, and crimes against humanity, including rape, sexual slavery, enforced sterilization, or any other form of sexual violence. The ICTR Akayesu ruling helped irreversibly change the way people thought about GBV during conflict (Copelon 2000). It was part of a long series of legal efforts to shift the normative ground regarding women and their rights to bodily integrity both during and also after civil conflict.

GBV has been a central issue emerging out of conflict, as large numbers of women faced rape, kidnapping, and sexual abuse. There is no direct connection between resources and GBV, and it is far too simplistic to argue that the use of coltan in cell phones is causing rape in Eastern Congo (Turner 2014). Nevertheless, the increased reliance on diamonds, oil, and other resources in African conflicts has exacerbated levels of violence against civilians, including GBV. Jeremy Weinstein (2007) has shown how rebel groups that rely on external or readily available resources to support their insurgency are far more violent in their tactics than those that rely on the local population to sustain them. In such countries, one often finds extreme human rights violations, abductions, use of child soldiers, child sex slavery, decapitations, amputations, and sexual violence.

**Domestic violence:** The area where there is the greatest discrepancy between conflict and postconflict countries is in legislation on domestic violence. Only 40 percent of countries without major conflict have legislation in this area compared with as many as 86 percent of the postconflict countries. This suggests enormous stresses on families during wartime, resulting in domestic abuse. Gradually, perceptions of domestic violence have begun to change throughout Africa. Women's organizations, and now increasingly the legislature and courts, are challenging the view that it is simply a private family matter that does not necessitate public scrutiny. In some countries, wife battery had been justified on cultural grounds and had even been justified as a sign of a husband's devotion to his wife. Women's experiences during conflict helped

foster an awareness of the need to end domestic violence and to use legal means as one tool to end such violence.

Women in Sierra Leone won a major victory in 2007 when a new law made wife beating a criminal offense. The law applies a broad definition of domestic violence. It includes “physical or sexual abuse, economic abuse, emotional, verbal or psychological abuse, harassment, conduct that harms, endangers the safety, health or well-being of another person or undermines the privacy and dignity of another person” (Domestic Violence Act 2007, Sierra Leone). The law also establishes family support units to educate police on sexual and domestic violence, work with rape survivors, ensure forensic testing, and help process cases. A Commonwealth police team has provided training to help police work with the community to carry out mediation and to support women who decide to press charges. Local women’s organizations are regarded as key to ensuring that the new law is implemented (“Human Rights Problems . . .” 2007).

*Female genital mutilation (FGM)*: Almost all postconflict countries that practice FGM have passed legislation in this area with two exceptions, while only 46 percent of nonconflict countries have passed this legislation. Women activists have also sought to eradicate female genital cutting through a variety of strategies, not only the passage of laws but also the adoption of educational, health, and income generation campaigns. Even though female genital cutting pertains to family, clan, and community influences, it is an area where there has been considerable progress even in countries where other legislation regarding women has been slow in coming. The issue has garnered considerable attention at the national and regional level. The 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women is the first international treaty to mention female genital cutting. In 2005, an African Parliamentary Conference held in Dakar focused on female genital cutting, and speakers and members of twenty African national parliamentary assemblies unanimously adopted a declaration calling for an end to the practice, arguing that “culture is not immutable and that it is subject to perpetual change, adaptations and reforms” (“Violence against Women . . .” 2005). They pledged to work with civil society, traditional chiefs and religious leaders, women’s and youth movements, and governments to adopt strategies to end the practice, drawing on a human rights framework by taking into consideration the education, health, development, and poverty dimensions of the problem. While most acknowledge that legislation alone can do little to eradicate the practice, it sets a normative bar and reflects a consensus on how societal leaders regard the practice. Education and the provision of incentives to circumcisers for alternate sources of income, in addition to other locally driven strategies, are key to eradicating the practice.

*Sexual violence*: All countries in Africa have antirape legislation, although in some countries it is fairly nonspecific, and the high penalty involved often prohibits arrests, charges, and convictions. In Uganda, one of the first laws

regarding women enacted after the cessation of civil conflict in 1986 had to do with rape (called “defilement”) of girls under the age of eighteen. The penalty of death that the crime carries has not only been challenged by human rights organizations, but has resulted in few convictions.

Since 2000, at least 73 percent of all postconflict countries have adopted new legislation specifically addressing sexual violence in contrast to non-conflict countries, where only 40 percent had such legislation. During and after the conflict in Liberia, rape was a relatively common form of violence, and rape legislation was adopted in 2005. Prior to this, only gang rape had been considered a crime. Members of Association of Female Lawyers of Liberia (AFELL) drafted the legislation, which strengthened penalties for rape, making it a nonbailable offense, carrying a sentence of ten years for rape of a woman and life imprisonment for rape of a minor. It raised the age limit for statutory rape to seventeen and recognized that rape is not perpetrated only against females. It defined rape beyond penile penetration to account for the use of gun butts and other such forms of violence. AFELL organized radio programs and held public forums to publicize the bill (International Crisis Group 2006).

Médecins Sans Frontières reported in 2009 that the incidence of rape was increasing in Liberia in the aftermath of war and was affecting girls in particular. Approximately 85 percent of the 658 reported rape cases at a Monrovia hospital were under eighteen, and 48 percent were between five and twelve. Even baby girls were being targeted. Over 90 percent of the children were raped by an acquaintance. Both women’s organizations and the government have been concerned about the lack of prosecutions, which are related to a number of factors. Alleged rapists were sometimes put in jail cells without being charged, and the courts would free them because they had failed to prosecute them within the required 48-hour period. Sometimes poverty, cultural norms, and stigma relating to rape led parents to extort money from the alleged rapists to settle the matter. Another possible reason for the lack of prosecutions is that the penalty of conviction of rape of a minor is too high from a societal perspective. Rape of a minor carries a life sentence. Few rape survivors report cases due to the stigma associated with it, not to mention the fact that most abuse involves acquaintances and family members. Moreover, there is no guarantee that the police will treat the rape survivors with dignity and respect, creating additional disincentives to report (“Government, Women’s Groups . . .” 2007). Finally, the weakness of the security apparatus and justice system has resulted in cases of mob justice and excessive violence by security officers being directed at suspects. These weaknesses in the criminal system have led women’s rights activists to point out that more community education is required regarding sexual assault.

**Trafficking:** The amount of legislation in nonpostconflict countries regarding trafficking exceeded legislation passed in postconflict countries. Unlike the other categories of violence against women, this one has little to

do with cultural practices and existing norms and therefore may be easier to pass in nonconflict countries. In major conflict countries, other categories of violence are more important in terms of passing legislation, including sexual violence, domestic violence, marriage of girls eighteen and over, and FGM.

#### ACTIVISM AROUND GBV LEGISLATION

Violence against women has resulted in considerable domestic, regional, and international mobilization, especially after the 1995 Fourth World Conference on Women in Beijing. United Nations agencies also put pressure on governments to address women's rights in a concerted manner. At a regional level, the 2006 Southern African Development Community (SADC) protocol on gender and development sets targets relating to GBV to be met by 2020.<sup>1</sup> All member states were to have in place legislation on GBV, domestic violence, human trafficking, and sexual offences by 2008, and this legislation was to be enacted by 2010. Perpetrators of domestic violence, marital rape, femicide, and other forms of GBV were required to be brought to justice in a court of competent jurisdiction. Those in the criminal justice system were required to be educated about these laws, and steps would be taken to eradicate traditional customs that perpetuate violence against women and children.

In many countries, women parliamentarians have spearheaded GBV legislation. Rwanda is a well-documented case. The Rwandan 2009 GBV Act was drafted by the women's parliamentary caucus, known as the Forum of Rwandan Women Parliamentarians (Forum des Femmes Rwandaises Parlementaires – FFRP), in a country where laws generally are drafted by the executive branch. The parliamentarians received support from the United Nations Development Programme (UNDP), Department for International Cooperation (DFID), Women Waging Peace, Swedish International Development Cooperation Agency (SIDA), United Nations Development Fund for Women (UNIFEM), and the African Development Bank in drafting the legislation (Pearson 2007). The FFRP's experiences in enacting this legislation reflect many of the challenges found with similar legislation in other parts of Africa. The parliamentarians initiated this legislation, in part, to address the high rates of rape, battery, and murder of women by their husbands. One study by the Rwanda National Police found that between 2005 and 2008, 259 wives were murdered by their husbands, over 2,000 rapes were reported to the police, and there were over 10,000 cases of rape of children below the age of eighteen (Kwibuka 2009). Amnesty International (Hillier and Wood 2003) attributed the heightened violence partly to an increased presence of small arms in the country.

<sup>1</sup> SADC Protocol on Gender and Development, 2006. [www.sadc.int/index/browse/page/465](http://www.sadc.int/index/browse/page/465).

According to the Rwandan Ministry of Gender and Family Promotion (RMGFP; cited in Pearson 2007), one in three women had been physically or verbally abused, and in the previous year one out of every two experienced domestic violence. Another Human Rights Watch study (cited in Pearson 2007) revealed that complaints of sexual violence against girls exceeded the number of complaints filed by adult women in 2003–2004. As a result of such figures, women activists were able to successfully lobby for a GBV desk in the national police force and also for the creation of a national GBV hotline (Pearson 2007, 31).

The ability of the women parliamentarians to enlist the support of men at every stage of the process was a key factor in explaining the passage of Rwanda's GBV Act. The women parliamentarians wanted men to feel ownership of the bill. Male parliamentarians were involved in field trips to consult with constituents; they participated in a national conference held in Kigali in 2005 to discuss the bill; FFRP shared early drafts with male colleagues; they got equal numbers of men and women to sponsor the bill; and male parliamentarians and men more generally were involved in public discussions of the bill. As one male parliamentarian put it:

I was in charge of delivering this particular message [on gender sensitivity]. At the end of the meetings, local leaders, local *male* leaders, were shaken up. Hearing the message format was an added value, [they were] more convinced, more able to take the message seriously. But if the message should come from a woman you [would have] found them saying, "Oh, yes we know the story," but they [wouldn't have] given it much weight. They tend to be more concerned with gender issues when a man delivers the message. (Powley and Pearson 2007, 17)

FFRP encountered some resistance from men who refused to cosponsor the bill or objected to some of the provisions within the bill, for example, they felt it overlooked men's experiences as victims of domestic violence. To counter these objections, FFRP cited studies that showed that although men were also affected by GBV, it was primarily women who were affected. They also were able to demonstrate that they had pursued a broad process in writing the bill, which underscored the fact that these were concerns prevalent within the population and therefore worthy of being addressed through legislation (Powley and Pearson 2007, 17–18).

#### FAMILY LAW

While GBV is one important area of concern for women activists in postconflict contexts, another important area relates to family law. In this area, postconflict countries rank higher on average (0.45) compared to nonconflict countries (0.55), with 1 being the lowest score in the Social Institutions and Gender Index. In all categories of family law, countries that experience major conflict do better than countries that have not experienced major conflict (Table 9.3).



TABLE 9.3 *Discriminatory Family Code*

	Postconflict	Nonconflict
Legal age of marriage	0.50	0.64
Early marriage	0.23	0.26
Parental authority in marriage	0.46	0.56
Parental authority after divorce	0.28	0.46
Inheritance: Daughters	0.63	0.68
Inheritance: Widows	0.60	0.70
Overall score	0.45	0.55

Ranking: 1 = lowest, 0 = highest.

**Explanation of categories:**

**Legal age of marriage:** Measures whether women have the same rights with respect to the legal minimum age of marriage.

**Early marriage:** Measures the prevalence of early and forced marriage. Percentage of women married between 15–19 years of age.

**Parental authority in marriage:** Measures whether women have the same right to be a legal guardian of a child during marriage.

**Parental authority after divorce:** Measures whether women have custody rights over a child after divorce.

**Inheritance: Daughters:** Measures whether widows have equal rights to their male counterparts as heirs.

**Inheritance: Widows:** Measures whether daughters have equal rights to their male counterparts as heirs.

Source: OECD Gender, Institutions and Development Database 2012.

## Property and land

Only eleven countries in sub-Saharan Africa have eliminated laws that discriminate against women in the acquisition of property or basic legal transactions such as signing contracts or even getting a passport.<sup>2</sup> Seven of these are postconflict countries. One of the areas where women's movements in Africa are facing the most resistance with respect to customary authorities and practices is in the area of land ownership. New land laws were enacted in Uganda, Tanzania (and Zanzibar separately), Mozambique, Zambia, Eritrea, Namibia, Rwanda, Sierra Leone, Liberia, and South Africa after the 1990s incorporating women's rights concerns. All but two of these – Tanzania and Zambia – are postconflict countries. Women were active and in leadership of a variety of land alliances and coalitions – from Uganda, to Rwanda, Mozambique, and Namibia – which have fought for the land rights of women, pastoralists, the landless, and other marginalized people. The disruptions in property have

<sup>2</sup> Gender and Land Rights Database [www.fao.org/gender/landrights/home/en/](http://www.fao.org/gender/landrights/home/en/).

been more extreme in postconflict countries, making it more urgent to address women's need to control their means of livelihood and support for the household.

In Uganda, the Land Act of 1997 granted women the right to own and control land. As a result, women's ownership of land either on their own or jointly with their spouse increased from 7 percent in 1995 to 39 percent in 2011. More women participated in land administration, constituting 33 percent of the Land Boards, which manage and control land in the Districts and 34 percent of Land Committees that advise the Board on area concerns regarding land rights, ownership, customary, and third-party interests (MGLSD 2014).

In this context, women's movements in Africa, particularly in postconflict countries, have increasingly been adopting rights-based approaches that challenge customary land tenure arrangements. Feminist lawyers working with these movements have argued that customary law in the present-day context has been used to selectively preserve practices that subordinate women. Women's attempts to assert their rights in ways that challenge customary land tenure systems are often perceived as an attempt to disrupt gender relations and society, more generally. This explains why so much is at stake in these battles over women's rights to land and why women's gains in this area have been so slow.

#### CHALLENGES OF IMPLEMENTING THE LAW

The adoption of legislation is only a first step in the process of addressing problems like GBV or female inheritance. The implementation of these laws is challenging in postconflict contexts because the legal systems and infrastructure have been undermined, while customary laws and traditional authorities prevail in ways that often discriminate against women. Poor treatment of rape survivors at the hands of the police also serves as a disincentive to report GBV incidents. One of the legacies of years of civil conflict has been the erosion of the justice system (Medie 2013; Yacob-Haliso 2012).

In a country like Liberia, the perpetuation of a culture of corruption and impunity that led to fourteen years of civil war continues to paralyze the justice system and threatens the peace, according to the International Crisis Group. Its 2006 study of Liberia's justice system found that the temporary measures that have been adopted to revive the legal system cannot preempt the need for a major overhaul of the legal system (International Crisis Group 2006). In 2003, the Security Council gave the Legal and Judicial System Support Division of the UN Mission in Liberia authority to oversee judicial reform during the transition.

Many of the requirements for reviving the legal system are fairly mundane but absolutely essential. Courts, police stations, and prisons need supplies of basic equipment for improved file management and record keeping to ensure

fair trial standards. Presently detainees remain imprisoned for lengthy periods due to a lack of personnel and proper documentation. The conditions in jails and prisons also need significant improvement (“Human Rights Problems . . .” 2007). Lack of funds has meant that courts have stopped functioning in many parts of the country or hearings are held in alternative locations because the court buildings have been destroyed. Low salaries for judges lead to corruption. They often lack the necessary legal texts to carry out their work. Beyond this, women and men in Liberia and elsewhere need to be educated about their rights and given the means by which to exercise them. Legislative changes are inadequate when women lack the knowledge and capacities to make use of existing laws. These challenges facing Liberia’s legal system are typical of postconflict countries in Africa.

New research has shown that where the state is weak, these limitations can potentially be circumvented through concerted efforts by international legal teams. In parts of eastern Congo, which has been severely affected by sexual violence, Milli Lake has shown that primarily international, but also domestic, NGOs working on sexual and gender-based violence have often been able to assume direct responsibility for administering justice. Despite weaknesses in Congolese law, the prosecutors have been able to use some of the most progressive international human rights protections to convict the accused. The NGOs have also helped shape national and local-level legislation and policy both through formal and informal means. As a result, survivors of sexual violence are tried under conditions that respect their privacy, while the conviction rates are unusually high. Nevertheless, the same problems mentioned previously influence outcomes even in these situations: Victims are often forced to pay bribes to police, while convicted prisoners are able to bribe their way out of prison or out of jail time and frequently fail to pay court-mandated damages to the victims (Lake 2014).

Current pressures for legislative change have also had to contend with some of the peculiarities of contemporary African legal systems, which are the product of a plurality of legal legacies originating during colonial rule. These legal legacies have shaped efforts at legislative reform in postconflict countries. Contemporary laws build on colonial common law traditions in former British colonies and civil law traditions in former French, Portuguese, Belgian, German, Italian, and Spanish colonies. These legal systems have coexisted at different levels of compatibility with customary law, including the laws of particular religious communities (see Chapter 8).

Beyond what is codified in terms of the relationship between formal and customary law, legal practice may diverge to an even greater extent so that even where there is a clear demarcation of jurisdiction between customary and general law, traditional authorities, customary local councils, informal local courts, and Sharia courts may prevail beyond their legal bounds. The decline of formal courts and the erosion of the rule of law as a result of civil war exacerbated this problem.

For example, a study in Sierra Leone showed that chiefs ruled on a wide range of cases that went well beyond their jurisdiction. They systematically ruled against women in matters of personal status, marriage, and inheritance, even though since the Courts Act, 1963, the local courts, which are under the statutory court, are the only institutions allowed to adjudicate in matters of customary law. The local courts were to replace the chiefs in this role after independence. There frequently has been collusion between parties and chiefs that works against women who are not connected to or do not have the resources to pay off the chiefs. Women are often treated as minors to be protected by their fathers, sons, or other male family members. Customary law, which is largely unwritten in Sierra Leone, is protected by the 1991 Constitution; however, the constitution also prohibits discriminatory law. Moreover, in the event that there is a conflict between customary law and common law, common law takes precedence. Sierra Leone's constitution limits the areas where the chiefs can adjudicate, particularly the extent to which they can influence matters of adoption, marriage, divorce, inheritance, and property. However, the chiefs, local authorities, and the litigants themselves are often unclear on the jurisdiction of the chiefs. Paralegal and legal aid organizations provide some legal assistance and mediation between family members and in holding education workshops for communities. But the larger problem of harmonizing customary and statutory laws and courts remains (Amnesty International 2006).

Thus, although some progress has been made in many postconflict countries, there is still a long way to go in reforming the legal system. There is a need to reconcile legal systems to allow appeals from the customary courts to be heard in the statutory courts, provide executive oversight of customary law, and support the training of judges. The aim is to eliminate various tiers of rights accorded women who have differential access to education, knowledge of legal rights, and resources. While some of the arrangements, like the three categories of marriage contracts in Rwanda, may be unavoidable as temporary transition provisions, ultimately women are not served by creating multiple systems of differential access to rights. These historical legacies pose enormous challenges for women's rights activists, who now are trying to find ways to harmonize mixed legal systems so that all women can enjoy the same rights. The central challenge is to create laws that respect culture without violating women's rights and discriminating against women.

While it has been of critical importance to pass legislation regarding violence against women, it has also become apparent that laws alone are insufficient and cannot replace community-based strategies, especially in countries with weak and poorly paid/corruptible judiciaries and police forces. One debate regarding the legal dimensions of tackling GBV is that legislation and criminalizing GBV alone does not begin to address the structural, systemic, and cultural factors underlying violence that are related to gender inequality. Moreover, women victims themselves may wish to adopt other, nonlegal methods to deal with

GBV and may not wish to have their partners arrested, as it brings the family into unwanted scrutiny by the police enforcement system. It is often minority and poor communities that disproportionately come under such scrutiny in many societies. Thus, the overemphasis on legal strategies is seen to remove agency from the woman and treats her only as a victim (Bumiller 2008; Garland 2001; Römkens 2001). Social policy and community-based strategies are required to address GBV structurally and systemically, for example, providing funding for shelters and support for changing societal attitudes and stereotypes regarding gender. This is why organizations like AFELL in Liberia place a lot of emphasis not only on providing women with legal advice and legal options, but also on alternative dispute mechanisms involving dialogue between conflicting parties.

The Uganda Association of Women Lawyers (FIDA) has made important gains, even in its most remote offices. A lawyer, Judith Adong, in Gulu talked in 2011 about how even in her war-ridden community, “Trends are changing, and the organization has had an impact on the ground, . . . now wives have their voices.” FIDA carries out mediations, trains the magistrates and others, partners with human rights organizations, conducts radio programs to educate the population, and promotes economic empowerment, and various legal education strategies. The main cases they took up have to do with GBV, land, and inheritance. About half their clients were widows facing landlessness in northern Uganda. Adong emphasized how the new legal framework assisted their work immensely. But much of their activity involved offering legal aid services to those seeking mediation of interpersonal conflict within the family.<sup>3</sup>

Thus, a balance between legal and social policy strategies and developing supportive policies is needed, including mediation, the creation of shelters, community support for domestic violence, and efforts to change societal attitudes and stereotypes through education.

Another limitation of policy in many countries is the persistence of steep penalties for rape and other forms of GBV. This makes victims reluctant to report rape, especially if family members are involved, and it results in few prosecutions and even fewer convictions. Human rights advocates are increasingly challenging death penalties for rape on the grounds that the use of violence to punish and deter violence is counterproductive and inhumane. The weakness of the security apparatus may result in excessive violence by security officers being directed at suspects.

Finally, in countries coming out of conflict there are particular challenges due to the erosion of the judicial and criminal system. The basic infrastructure of courts, police stations, and prisons needs drastic improvement to ensure fair trial standards. Corruption often remains rampant in situations where judges and other personnel are poorly paid.

<sup>3</sup> Interview with Judith Adong, Gulu, January 6, 2011.

**CONCLUSION**

We have witnessed some important developments in women's rights with the end of conflict in Africa, especially after the 1990s, when the number of conflicts began to decline significantly. The passage of GBV legislation is one of these developments, representing a normative shift that is taking place regarding women's rights across the continent. Postconflict countries led the way in adopting key GBV legislation, which then diffused to nonconflict countries. While the gap is narrowing between postconflict and nonconflict countries in the adoption of legislation, postconflict countries remain on a distinct and more rapid trajectory of reform. This is also evident in legislation around quotas, family law, and land law. It remains to be seen whether these advances in legal reform will result in changes in people's daily lives and whether they can be sustained.

